

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

**NOTICE OF INCLUSION IN THE EARLY ASSESSMENT PROGRAM
IN THE WESTERN DISTRICT OF MISSOURI**

Style of Case: **Richard Swinger v. Menu Foods, et al.**
Case Number: **07-5041-CV-SW-SWH**

This case has been selected for inclusion in the Early Assessment Program.

Your case has been assigned to an outside mediator.

After responsive pleadings are filed, the parties have 15 days to select an outside neutral of their choice and file a certificate with the Clerk's office stating the name, address and telephone number of the outside neutral selected, and the date, time and place of the first meeting scheduled with the outside neutral. The certificate must be filed within the 15 days stated, and must be signed by or on behalf of each party. This certificate should be filed electronically and the filers should use the event "Designation of Neutral" which is under the "Other Filings" category and the heading "ADR Documents".

A clear understanding should be entered into between the parties and the outside neutral as to the payment of the costs of the outside neutral, and how the costs are to be shared between the parties. Unless a party has been granted leave to proceed in forma pauperis, the parties are to promptly pay for the costs of the services of the outside neutral.

If a certificate is not timely filed, the parties will be provided with a list of potential neutrals as provided in Section VIII.D.2 of the General Order, and the parties will have 10 days from the date on the list of the potential neutrals to:

- a. Agree to a neutral on the list and report the selection of the agreed neutral to the Administrator of the Early Assessment Program (Magistrate Judge James C. England) in writing. Failure to agree to a neutral and report the same may result in the appointment of a neutral from the list of qualified neutrals by the Administrator, Magistrate Judge James C. England.

It is anticipated that the cases assigned to an outside neutral will proceed with at least one mediation session; however, if agreeable to the parties, the case may be processed with early neutral evaluation or other alternative dispute resolution procedures.

Please read carefully the General Order describing the Early Assessment Program in more detail.

As a party to a lawsuit in this Court, you are entitled to pursue all claims or defenses to claims that

you have asserted until a disposition of the claims or defenses is made by the Court or a jury. However, most of the lawsuits filed in this and other courts are resolved by voluntary settlement of the parties before trial. With a settlement, the expense and inconvenience of litigation can be reduced and the uncertainty of the outcome can be eliminated.

In many cases that are settled, the settlement does not take place as early or economically as possible. The purpose of the Early Assessment Program is to provide alternative dispute resolution (ADR) services to assist parties in arriving at a voluntary, early resolution of their dispute.

**YOUR OBLIGATIONS IN THIS COURT ARE NOT AFFECTED
BY YOUR INCLUSION IN THIS PROGRAM**

Good faith participation in the Early Assessment Program and use of one of the alternative dispute resolution (ADR) processes is required, but you are not required to settle the case.

Inclusion in this program does not relieve you of any of the obligations or deadlines that you have in this lawsuit. **IF YOU HAVE BEEN SERVED, YOU MUST FILE A TIMELY RESPONSE IN ORDER TO AVOID THE RISK OF A DEFAULT JUDGMENT.**

The goals of the Assessment are to determine which ADR procedure is most likely to help the parties reach a settlement, and to promptly begin settlement negotiations, if appropriate. Ideally, the parties will mutually decide which ADR option to use. However, if the parties are unable to agree, the decision will be made by the Administrator or the person conducting the meeting.

It is important that you carefully review and objectively evaluate your case prior to the first meeting. You should come prepared to discuss and negotiate the settlement of your case.

PLEASE NOTE THAT PARTIES ARE REQUIRED TO ATTEND (IN PERSON) ALL MEETINGS UNLESS EXCUSED BY THE PERSON CONDUCTING THE MEETING.

The actions of the person conducting the meeting(s) have no binding effect on discovery, motion practice or other aspects of preparation for trial. Only the assigned judge can control these matters. However, all communications made in connection with the Early Assessment Program are confidential and cannot be used at trial, except as provided in the General Order and Federal Rule of Evidence 408.

Set out below are some of the major ADR options that are available through this program. This list does not preclude the development of some other procedures by the parties, in consultation with the Administrator or the person in charge of the meeting.

MEDIATION

Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

The mediator is a lawyer who possesses the unique skills required to facilitate the mediation process, including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render a final decision in the case.

EARLY NEUTRAL EVALUATION (ENE)

Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of their case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute, as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS

The Administrator, or the person conducting the meeting, and the parties may decide that a mini-trial, or binding arbitration, or some other form of ADR may be the best way to resolve the case.

The purpose of this program is to help parties save time and money. It will succeed if lawyers and parties make a good faith effort to comply with the spirit of the program.

Magistrate Judge James C. England, Administrator
Early Assessment Program
U.S. District Court
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Springfield, Missouri 65806
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